



CITY OF WAUWATOSA  
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**BOARD OF REVIEW**

**Thursday, June 28, 2012 – 9:00 a.m.**

PRESENT: Messrs. Benz, Lemke, Van Bibber -3

ALSO Mr. Miner, Assessor; Mr. Lenski, Deputy Assessor

PRESENT: Ms. Miller-Carter, Assistant City Attorney; Ms. Ledesma, City Clerk

Mr. Benz in t he Chair

**Personal Property Account #272375**  
**9200 W. Wisconsin Avenue**

This objection, filed by United Dynacare LLC, was withdrawn.

**Tax Key #331-9792-00**  
**2578 Wauwatosa Avenue**

City Clerk Ledesma swore in Ron Collison, 2140 N. 93rd Street, Matthew Collison, 2010 N. 81st Street, Roy Scholtka, 8000 Warren Avenue, and Tom Anderson, 12340 NE Shoreland Drive, Mequon.

The assessed value as of January 1, 2012 is \$59,000.

Mr. Collison opined that the property value as of January 1, 2012 is \$0. There are no recent comparable sales that can be used. It is very difficult to find information indicating actual market value.

He verified that he has complied with Wisconsin Statutes 74.7 (7)(c) in that he has not talked with members of Board during the time period when the Board is convened. He did speak in 2011 with Mr. Benz over the phone, but the 2011 Board of Review had already adjourned for the year.

Mr. Collison stated that market value, as determined by Wisconsin Statutes 70.32 (1), is the amount of money that a qualified buyer is willing to give a qualified seller. Value has to do with the condition of a property and contamination under a property. Whether or not contamination is identified has little to do with what a buyer is willing to buy it for. Mr. Collison stated he believes his property to be contaminated. Once a property is determined to be contaminated, the owner is required to report it to the Department of Natural Resources (DNR). In order to determine whether a property is contaminated, the property owner must be willing to expose himself to the demands of the

DNR. This can put the owner in the position of spending a considerable amount of money to prove/disprove this.

Mr. Collision stated that Mr. Scholtka, 8000 Warren Avenue, is present to provide testimony, as he lists properties. Additionally, Mr. Collision stated he has affidavits and letters from persons interested in purchasing the property, and their subsequent reactions to learning that there may be contamination on the property.

Roy Scholtka, 8000 Warren Avenue, stated has been a real estate broker since 1973 and is involved with commercial properties. He is familiar with the subject property and walked through it in 2000. He has not been in the property since a 2011 fire, however. He submitted a copy of an April 19, 2000 letter to Mr. Collision wherein he stated he would sell the property 'as is' (presumably contaminated with perchlorethylene), and estimated the value to be \$50,000 or under. Mr. Scholtka stated that currently he would not market it. There is too much contingent liability to become involved.

Mr. Scholtka suggested that a 'Phase 2' environmental audit is needed to determine exactly what the nature and extent of the liability is.

Mr. Collision presented a copy of a letter he gives to real estate brokers before they list the property which enumerates the facts he know of about the property. An addendum attached to the aforementioned letter mentions known instances of contamination that have occurred.

Mr. Scholtka noted that while this letter and addendum puts real estate brokers on notice, he personally would seek further disclosures so as to be released from any liability. He stated he was unaware of any brokers today who would be willing to list the property.

Mr. Scholtka responded affirmatively when Assessor Miner asked whether the Phase 2 audit is a typical requirement for this type of property. The audit helps identify the extent of any clean-up operation.

Mr. Collision pointed out that his intention is to sell the property 'as is' without a Phase 2 audit being performed. Mr. Scholtka confirmed that it is usually the seller, not the buyer, who pays for the audit.

Tom Anderson, 12340 NE Shoreland Drive, Mequon, stated that he has been a dry cleaner owner and a laundromat owner for over 30 years, and in the business itself for 58 years. His properties are in Milwaukee. Mr. Anderson stated that he tried to borrow money for business purposes using his buildings as collateral; however, he could not obtain a loan unless a Phase 2 audit was performed. He had to borrow an additional \$100,000 (now in escrow) to pay for the cost of the clean-up.

Mr. Anderson added that he was interested in purchasing Mr. Collision's property; however, the bank would require a Phase 2 audit to be performed before granting a loan. He is not presently interested because of the potential contamination on the site. In closing, Mr. Anderson noted that he has a possible buyer for his Teutonia and Hampton shop, but the buyer will not proceed until contamination is eliminated.

Mr. Miner acknowledged similarities between Mr. Anderson's property and Mr. Collision's, but added that until definitive testing is performed on the Wauwatosa Avenue property, contamination – while suspected – is unknown for sure.

Mr. Collison stated that, assuming the Board upholds the assessor's valuation, the next step is circuit court for a Writ of Certiorari. Information will be submitted to the court, including information regarding property contamination. Mr. Collison explained that the information must be submitted to the Board so that it can be considered by the court in the future.

For the record, Mr. Collison added that he is challenging the section of the Wisconsin constitution pertaining to rules of uniformity. Those rules state that all properties must be assessed on a uniform basis and taxed in accordance with actual market value. The remedy for challenging the assessor's valuation requires him to proceed through the Board of Review. However, the Board does not offer a fair forum for his objection because the Board does not have jurisdiction over legal matters, i.e., that the assessor is not assessing his property fairly at true market value.

Mr. Collison pointed out that the city has been reluctant to take possession of the property because of the contamination. Typically, municipalities will foreclose on properties with unpaid taxes. Evidently the city knows enough about this property not to take possession. Usually, a property with unpaid taxes is turned over by a municipality to the county. The county will underwrite the uncollected taxes, and then take action against the owner. Mr. Collison stated he has asked the county treasurer to sue him for the unpaid taxes. However, neither does the county want to take possession of the property because of the risk of contamination.

Mr. Collison pointed out that p. 47 of the city's 2012 executive budget acknowledges potential liability of his property. It further notes 'potential approval' for a Phase 1 assessment of his property. However, the assessor is reluctant to take this information into consideration when assessing his property.

Mr. Collison also submitted an excerpt from a 2011 Milwaukee County treasurer foreclosure list showing that the foreclosure process was started on his property, but the property was subsequently removed from the list.

Matthew Collison referenced notes taken by former assessor Kathleen Isleb during a tour of the subject property in 2000. Subsequent to the inspection, the value of the property was reduced; at that time, Ms. Isleb observed that absent a Phase 2 audit it was very difficult to determine the level of contamination.

Rodolfo Salcedo, coordinator of Milwaukee's Environmental Site Assessment operations (at least as of a July 2008 letter from Mr. R. Collison to County Supervisor Luigi Schmitt) had performed studies for Milwaukee on contamination and he opined that an environmental assessment can be very expensive. A Phase 1 study determines probability of contamination; a Phase 2 audit uses core samples to determine the location of contamination. A Phase 3 study determines the extent of contamination and removes the sources of contamination and contaminated soil. A Phase 2 audit, however, does not quantify the amount of contamination.

Mr. Collison observed that the assessor's office persists in the belief that the property has value to a potential buyer and keeps assessing accordingly; delinquent taxes keep accruing. He owes about \$40,000 in back taxes. Hence, it is important for him to get the assessor's office to reduce the value to the actual market value.

A state law (74.53) passed in the 1980's gives a county or a municipality authority to sue for payment of delinquent property taxes, the cost of razing and removing property, or the cost of abating a public nuisance. Mr. Collison stated that the judgments against him have an annual accrual rate of 18%. He is unable to get out from under the burden of this property. However, if the value of the property is reduced, he could approach the DRN to get the land cleaned up. Mr. Collison also referenced 75.106 of the state statutes, stating that provisions therein could assist in straightening out the tax problems associated with the property.

Mr. Collison stated that he had written to former Community Director Nancy Welch in June 2011 (open records request), again in November 2011 (and then to Paulette Enders, Economic Development Director, also in November 2011) concerning the city's efforts to get the county to take over the property, and then to apply for federal grant money to clean it up, all the while denying contamination in order to continue assessing the property. City Attorney Kesner responded to his letter in Ms. Welch's absence, assuring him that requested information would be provided if not deemed confidential due to litigation.

Mr. Collison noted that when he appeared before the 2011 Board of Review he did not state clearly enough that he was contesting due process equal protection under the 14th Amendment. In addition, he is contesting Article 1, Section 9 of the Wisconsin constitution. He should be able to object to his property's assessment without having to pay for it (i.e., have an environmental audit performed). Furthermore, he should not be held responsible for the clean-up of contamination that a previous owner caused.

Ed Krajcir, N9 W2723 Jacqueline Drive, Waukesha, was sworn in. He is the president of Sunbelt Business Brokers and a licensed real estate broker. Mr. Collison had approached him about listing his property. However, since the company operates on commission-only transactions, it only lists properties it feels will sell. Based on the overall value of the subject property, Mr. Krajcir stated he was not aware of any use that would outweigh its liability to Sunbelt.

Mr. Collison submitted a June 2004 affidavit from Christina Fohr wherein she expressed interest in purchasing the property until she learned of the hazardous chemical spill of perchlorethylene. At that point she was no longer interested in making the purchase. He opined that he has presented adequate information to the Board from various sources showing that buyers are not interested in purchasing the property.

The assessor's office submitted a 2012 valuation summary to the Board. Mr. Miner stated that he goes through three approaches when determining a property's value. The ratio for this year is 110%, making the full value of the subject property \$53,636.

The assessor's office also submitted photos of 2578 Wauwatosa Avenue (331-0792) and noted that the adjacent property (331-0793) is also involved in this objection as the building covers both parcels. There is also a masonry structure on 0793.

The 2012 land value is \$35,300; improvements are assessed at \$23,700, for a total of \$59,000. The land value has been reduced due to suspected contamination. Mr. Miner referenced an undated newspaper article which stated that city had used a portion of \$400,000 in federal grant dollars to perform an environmental assessment on the subject property. He did not believe, however, that a Phase 2 audit was paid for. Mr. Miner added that after the November 2011 fire, he obtained a report from the fire department and documented what damage he could observe from the outside. A revised

assessment notice was issued based on the fire damage. Mr. Collison, however, stated he had not received this notice and filed a request for a property review.

In February 2012, Mr. Miner received a letter from the company who performed the Phase 1 study. He has not had any further information from the city's Community Development Department, however, concerning the existence or extent of contamination. Neither has the property owner submitted any reports.

Mr. Miner referenced the assessor's manual, noting that Phase 2 studies are a common vehicle used to provide information about properties. Additionally, environmental engineers can also provide other information. Mr. Miner stated he asked to receive some kind of reports, since he tends not to make reductions without some solid evidence. He again referenced the assessor's manual, citing information on pages 8-43 (contaminated property, identifying contamination), 8-44 (estimating value), 8-47 & 48 (severe contamination), and 9-57 & 58 (contaminated properties) as sources he used when evaluating this property.

Mr. Miner reiterated that he used three approaches when analyzing the value of the subject property: the sales approach, income approach, and cost approach. Comparable sales are difficult to find as many have problems similar to the subject property. In using the cost approach, he assigned a value to the land and then added the commercial building's value to that for a total of \$65,400. The income approach yielded a value of \$55,000. He reiterated that he used Department of Revenue-recommended methodology when valuing this property. Multiple adjustments have been made already for suspected contamination; the 2011 fire resulted in yet another adjustment.

The hearing was declared closed.

Mr. Van Bibber opined that the assessor followed state statutes and regulations in assessing this property, and for those reasons the assessment should be deemed correct.

Mr. Lemke concurred, noting that nothing (i.e., Phase 1 or Phase 2 audit, engineering reports, other evidence) have been submitted to substantiate the contamination contention. The property owner has not met the burden of proof.

It was moved by Mr. Van Bibber, seconded by Mr. Lemke to sustain the assessor's valuation. -3

**Stipulations**

<u>Account #177450</u>	<u>From</u>	<u>To</u>	<u>Change</u>
Furniture & fixtures	\$30,840	\$0	-\$30,840
Other	\$16,710	\$0	-\$16,710
Total	\$47,550		-\$47,550

This account was associated with Milwaukee General Vascular Surgery Associates, sc, 10400 W. North Avenue, which closed in 2011.

<u>Account #000513</u>	<u>From</u>	<u>To</u>	<u>Change</u>
Furniture & fixtures	\$197,320	\$210,450	\$13,130

Other	<u>\$ 390</u>	<u>\$ 3,730</u>	<u>\$ 3,340</u>
Total	\$197,710	\$214,180	\$16,470

This account is associated with Aldi, Inc., 12120 W. Burleigh Street; the amounts were amended based upon an amended return submitted at a later date.

It was moved by Mr. Van Bibber, seconded by Mr. Lemke to accept the foregoing stipulations. -3

The 2012 Board of Review adjourned sine die at 11:15 a.m.

Carla A. Ledesma, City Clerk

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